

Oral Hearing:  
May 6, 1997

Paper No. 14  
GDH/gdh

THIS DECISION IS NOT CITABLE AS  
PRECEDENT OF TTAB

JAN 13, 98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Solomon

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Serial No. 74/542,359

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Steven Solomon, Esq. for applicant.

Craig D. Taylor, Senior Examining Attorney, Law Office 107  
(Thomas Lamone, Managing Attorney).

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Before Hohein, Hairston and Walters, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Sarita Solomon has filed an application to register the  
term "COMMUNITY PROPERTIES" as a trademark for a "newspaper  
column reporting local, regional and national news, trends and  
developments in the residential real estate and mortgage  
industry."<sup>1</sup>

Registration has been finally refused under Section  
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis

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<sup>1</sup> Ser. No. 74/542,359, filed on June 27, 1994, which alleges dates of  
first use of December 9, 1993.

that, when used in connection with applicant's goods, the term "COMMUNITY PROPERTIES" is merely descriptive of them.

Applicant has appealed. Briefs have been filed and an oral hearing was held. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

Applicant, in her brief, states among other things that:

Applicant is the author of a weekly newspaper column that regularly reports on all facets of national, regional and local news, trends and developments in the residential real estate marketplace and in mortgage rates applicable to residential home construction and sales. "COMMUNITY PROPERTIES" (the mark) is the title of applicants [sic] newspaper column. The format of COMMUNITY PROPERTIES consist [sic] of articles discussing residential real estate developments at the national and local level culled from such well known sources of information as the National Association of Realtors, the U.S. Commerce Department, the U.S. Department of Housing and Urban Development and the Federal Home Loan Mortgage Corporation.

She insists, however, that in such context, the term "COMMUNITY PROPERTIES" is not merely descriptive. Specifically, applicant maintains that:

[T]he mark is "arbitrary," in that it applies common words, usually referring to property owned jointly by a husband and wife, i.e., community property, in an unfamiliar way, to a real estate news column. Alternatively, applicant further contends that the mark is "suggestive," in that it subtly indicates something about the product but requires the readers of the column, i.e., the general public, to exercise imagination as to the nature of the product. ....

In addition, according to applicant, she "purposefully stayed away from using common descriptive words such as real estate, news, residential and sales" in "devising the mark COMMUNITY PROPERTIES". Although acknowledging that, as disclosed by the copies of her initial article which she submitted as specimens, the statement is made that "[t]his is the inaugural

column in what will be a series of weekly articles informing our readers of developments in the local residential home sales market," applicant asserts that:

The language cited above was never intended to be fully descriptive of the news column. Rather the text of the news column, cited by the Examining Attorney in the final determination, dealt primarily with local issues because the author initially attempted [to] gain readership by concentrating on news and information affecting the local residential single-family resale market.

Thereafter, and in an effort to correct the false impression created by a reading of applicants [sic] first article, applicant submitted with the request for reconsideration Twenty Eight (28) additional ... articles, written prior to the examining attorneys [sic] initial [sic] decision in this matter, which convey a more accurate view of the true nature of the news column as containing national, regional and local news content.

The Examining Attorney, on the other hand, argues that the term "COMMUNITY PROPERTIES" is merely descriptive "because it conveys an immediate idea of the subject matter of applicant's column." In particular, the Examining Attorney urges that "the wording describes a column dealing with real estate information." Relying upon definitions of the words "community" and "property," which the excerpts which he made of record from Webster's Ninth New Collegiate Dictionary at 267 and 943 respectively define as "the people with common interests living in a particular area; broadly : the area itself" and "something owned or possessed; specif : a piece of real estate," and additionally noting that the same dictionary at 267 list the term "community property" as

signifying "property held jointly by husband and wife,"<sup>2</sup> the Examining Attorney maintains that "the average purchaser would readily perceive the combination of [the] terms ["COMMUNITY" and "PROPERTIES"], in their ordinary meaning, as real estate in a particular area." As additional support for his position, the Examining Attorney observes that:

Applicant's specimens of record underscore the descriptive significance of the wording as applied to the goods. According to the material, the text identifies the column as "a series of weekly articles informing our readers of developments in the local home sales market." It is noted that "the average price of existing homes sold in Westport and Weston during September, October and November, 1993, increased by over 10%, when compared to the same period in 1992, according to home sales reported by the Westport-Weston Board of Realtors." It is further noted that "the May increase in interest rates by the Federal Reserve has slowed the pace of growth in the real estate economy." The wording, in short, is merely descriptive of the subject matter.

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<sup>2</sup> We also note, in this regard, that the term "community property" is further set forth in Black's Law Dictionary (5th ed. 1979) at 254 as:

Property owned in common by husband and wife each having an undivided one-half interest by reason of their marital status. The eight states with community property systems are: Louisiana, Texas, New Mexico, Arizona, California, Washington, Idaho, and Nevada. The rest of the states are classified as common law jurisdictions. The difference between common law and community property systems centers around the property rights possessed by married persons. In a common law system, each spouse owns whatever he or she earns. Under a community property system, one-half of the earnings of each spouse is considered by the other spouse.

It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

With respect to the additional articles which applicant later submitted, the Examining Attorney contends that such columns likewise support the refusal to register. The Examining Attorney, in particular, accurately points out that:

These articles are replete with descriptive references to real estate properties in the community of Westport, Connecticut. Applicant's [sic] usually identifies [national or regional] trends or developments followed by an explanation of [their] impact on the local real estate. For example, the applicant writes that "the latest government figures show a slowing in home building, adding yet another sign that rising interest rates are slowing housing activity." In the wake of this trend, she identifies "some of the Westport and Weston residential homes that changed hands recently." In another column, applicant notes that [in] "a report released by the National Association of Realtors, May sales of existing previously owned homes fell seven tenths of 1 percent to an annual seasonally adjusted rate of 4.09 million, from 4.12 million in April. [Sales were mixed regionally, rising 10.5 percent in the Northeast and 1.9 percent in the South while declining 12.4 percent in the West and flat in the Midwest.]" She then lists, "in order of worth, ... some of the Westport and Weston residential homes that changed hands recently."

Upon careful consideration of the evidence and arguments presented, it is our view that, when applied to newspaper columns which report local, regional and national news, trends and developments in the residential real estate and mortgage industry, the term "COMMUNITY PROPERTIES" immediately describes, without conjecture or speculation, a significant aspect or feature of applicant's goods, namely, that the subject matter of her newspaper columns deals with properties (specifically, residential real estate) which have changed hands

recently in the community composed of Westport and Weston, Connecticut. Applicant's argument that the term "COMMUNITY PROPERTIES" is suggestive of her real estate news column in that it refers, in a novel or unfamiliar way, to property owned jointly by a husband and wife, that is, to community property, ignores the fact that the former is not simply the plural of the latter but has, instead, a connotation which is totally different from that of a property law concept or tenancy. As used in the context of her real estate news column, which often features photographs of recently sold homes in addition to listing sales of dwellings in order of their worth or selling price, the term "COMMUNITY PROPERTIES" has no ambiguity or lack of clarity in its meaning and, especially in a common law jurisdiction such as Connecticut, would not evoke a suggestion of the civil law concept or tenancy of community property.

In consequence thereof, the term "COMMUNITY PROPERTIES," as used in connection with applicant's newspaper columns dealing with local, regional and national news, trends and developments in the residential real estate and mortgage industry, has a plain and readily understood meaning signifying that a principal aspect or subject of applicant's columns is information about properties which have sold recently in the community under discussion, with applicant typically relating national, regional or local real estate developments to the area composed of Westport and Weston, Connecticut. There is nothing in the term which is ambiguous, incongruous or susceptible to multiple connotations, nor is any imagination, cogitation or

gathering of further information necessary in order for real estate professionals or members of the general public, which would constitute the purchasers or readership of applicant's columns, to perceive precisely the merely descriptive significance of such a term. Moreover, that applicant may be the first person to have used the term "COMMUNITY PROPERTIES" in connection with her real estate newspaper columns, particularly in light of the stated fact that she "purposefully stayed away from using common descriptive words such as real estate, news, residential and sales" in selecting a mark, is not dispositive where, as here, the term unequivocally projects a merely descriptive connotation. See In re MBAssociates, 180 USPQ 338, 339 (TTAB 1973).

Accordingly, because the term "COMMUNITY PROPERTIES" conveys forthwith the principal subject matter of applicant's newspaper columns reporting on local, regional and national news, trends and developments in the residential real estate and mortgage industry, it is merely descriptive of such goods within the meaning of the statute. See, e.g., In re Gracious Lady Service, Inc., 175 USPQ 380, 382 (TTAB 1972) ["CREDIT CARD MARKETING" merely descriptive of periodic pamphlet devoted to subjects of interest to those engaged in credit card merchandising field]; Sterling House, Inc. v. Dell Publishing Co., Inc., 174 USPQ 299, 300 (S.D.N.Y. 1972) ["DAYTIME TV" merely descriptive of magazine devoted to daytime serialized television programs]; and In re Nippon Kokan Kabushiki Kaishai, 171 USPQ 63, 64 (TTAB 1971) ["JAPAN STEEL NOTES" merely descriptive of



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magazine containing articles relating to the Japanese steel industry].

**Decision:** The refusal under Section 2(e)(1) is affirmed.

G. D. Hohein

P. T. Hairston

C. E. Walters  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board